Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 8, Original

STATE OF ARIZONA, *Complainant*,

v.

STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT, COACHELLA VALLEY COUNTY WATER DISTRICT, THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF LOS ANGELES, CITY OF SAN DIEGO, and COUNTY OF SAN DIEGO, *Defendants*,

UNITED STATES OF AMERICA and STATE OF NEVADA, *Intervenors*,

STATE OF NEW MEXICO and STATE OF UTAH, *Impleaded Defendants*.

RESPONSE OF THE COLORADO RIVER INDIAN TRIBES AND THE COCOPAH INDIAN TRIBE TO MOTION OF THE UNITED STATES FOR MODIFICATION OF DECREE

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I.

INTRODUCTION

The Colorado River Indian Tribes and the Cocopah Indian Tribe (herein "the two Tribes") jointly filed their Motion for Leave to Intervene and Petition of

Intervention on April 10, 1978. That motion has been referred to the Special Master by the Order of this Court of January 9, 1979.

The United States, on December 21, 1978, filed its Motion for Modification of Decree and Supporting Memorandum which presumably also is to be considered by the Special Master. That motion seeks adjudication of additional water rights for the benefit of the two Tribes, and three other Indian tribes.

Inasmuch as the motion of the two Tribes has not yet been ruled upon, the status of the two Tribes in this suit is unresolved. Nevertheless they believe it appropriate to advise this Court and the Special Master of their position upon the pending motion of the United States.

II.

THE TWO TRIBES ADOPT AND APPROVE THE UNITED STATES' REQUESTED ADJUDICATION AND MODIFICATION OF THE DECREE OF MARCH 9, 1964, EXCEPT THAT THE COLORADO RIVER INDIAN TRIBES RESERVE THE RIGHT TO SEEK ADDITIONAL WATER RIGHTS FOR OMITTED LANDS

The two Tribes concur in the legal analysis of the United States upon which the requested adjudication and modification of the Decree of March 9, 1964, is predicated. They also approve the proposed adjudications themselves, but without waiver or compromise of the claims of the Colorado River Indian Tribes for additional water rights for omitted lands, as the term "omitted lands" is explained in the motion of the United States, at page 6.

As set forth in the motion of the two Tribes, the Colorado River Indian Tribes claim additional present perfected rights to water from the Colorado River

computed upon an additional 37,449 irrigable acres of omitted lands, *see* page 9 of the two Tribes Motion for Leave to Intervene. By its motion, the United States seeks on behalf of the Colorado River Indian Tribes adjudication of additional water rights based upon only 15,000 additional acres of omitted lands. While supporting the United States' request to adjudicate those additional rights, the Colorado River Indian Tribes reserve and reassert their claim to the difference, or water rights based upon an additional 22,449 irrigable acres of omitted lands. The position and motion of the United States are not inconsistent with or opposed to such additional assertions by the Colorado River Indian Tribes, *see,* page 7 of the motion of the United States, including footnote 1.

The Colorado River Indian Tribes do fully adopt and approve the adjudication requested by the United States for boundary lands, and the Cocopah Indian Tribe fully adopts and approves the adjudication requested by the United States for both boundary lands and omitted lands, in their respective reservations.

III.

INDIAN WATER RIGHTS ARE DETERMINED EXCLUSIVELY BY THE AMOUNT OF WATER NECESSARY TO IRRIGATE PRACTICABLY IRRIGABLE ACREAGE

On page 29 of its motion, the United States declares that the prior Special Master ". . . suggested a ceiling on the tribal water rights, which this Court approved as 'reasonable' ". The two Tribes would take exception to that statement if construed to mean that there is any further "ceiling", restriction or limitation, imposed upon Indian water rights which are measured by the specific determination of irrigable acres and the

amounts of diversion necessary to supply the consumptive use for irrigation of those acres. Specifically, there is no subjective or other indefinite criteria such as "reasonableness" upon the exercise of those rights. As shown at pages 263-264 of the Report of December 5, 1960, of the prior Special Master, and by the Opinion of this Court of June 3, 1963, 373 U.S. 546 at 600-601, adjudicated Indian water rights are determined exclusively by the amount of irrigable acreage and the amount of water necessary to irrigate such acreage, without any further ceiling.

IV.

THE DECREE OF MARCH 9, 1964, DOES NOT BAR ADJUDICATION OF ADDITIONAL WATER FOR OMITTED LANDS

The United States in its memorandum supporting its motion effectively addresses the question of whether the Decree of March 9, 1964, would bar by application of *res judicata* the adjudication sought by the motion of the United States. In addition to the arguments presented by the United States in its memorandum, the two Tribes reassert their position that the 1964 Decree does not bar relief by *res judicata* with respect to omitted lands because of the existence of a conflict of interest attributable to the government's representation of their interests. The arguments of the two Tribes and their citations of authority appearing on pages 9 and 10 of their motion of April 10, 1978, are incorporated herein.

V.

CONCLUSION

The two Tribes fully support the motion of the United States except insofar as it may be construed to impose a "ceiling" on Indian water rights other than as set forth in Part III, above, and without waiver of the Colorado River Indian Tribes' right to seek additional water for omitted lands.

Respectfully submitted,

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